

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR. JUSTICE TIRATH S. THAKUR

WRIT PETITION NO. 6275/1992

BETWEEN:-

Shri C.P.Appanna,
S/o Late Shri C.M.Ponappa,
aged about 73 years,
Chettolli 'A' Estate,
Chetalli Post,
Kodagu Dist.

..PETITIONER

(By Sri K.A.Hemraj, Advocate)

AND:-

The Wealth-Tax Officer,
Word-I, Mercara,
Kodagu Dist.

..RESPONDENT

(By Sri M.V.Seshachala, Advocate)

This Writ Petition filed u/a 226 & 227 of the Constitution of India praying to quash Annexure-D dt. 24.10.91 bearing No.BB-22-A passed by the Respondent for the assessment year 1989-90 to the extent of levy of interest of Rs.5,490/- u/s 17-B of the Act, holding as illegal and unjustified and etc.

This Writ Petition coming on for hearing, this day, the Court made the following:-

O R D E R

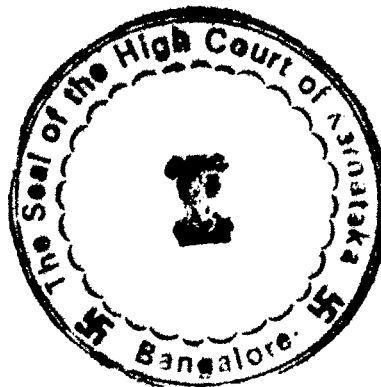
The petitioner, his wife and son were assessed as a Hindu Undivided Family by the Wealth Tax Officer upto the assessment year 1976-77. In the year 1977 however, a family partition is said to have taken place in which the property owned by the HUF was divided between the members constituting the same. Returns under the Act were thereafter filed in individual capacity of the Members and were according to the petitioner accepted without any objection by the Assessing Authority. For the assessment year 1989-90, similarly, a return was filed by the petitioner in his individual capacity declaring a net wealth of Rs. 22,42,200/- on which a tax of Rs. 18,205/ was also paid. This return was accepted by the assessing authority by his order dated 18.1.90. Few months later however, a notice under Section 17 of the Wealth Tax Act, 1957 was issued to the petitioner calling upon him to file the return in the status of HUF. A fresh return was accordingly filed which was accepted by the W.T.O. by his order dated 24.10.91. The net owned wealth disclosed in the petition's individual return was however the same as the

one disclosed in the fresh return in the status of HUF so that the tax liability in both the situations remained at Rs.18,205/-. This amount, as noticed earlier had been already paid by the petitioner while filing the individual return and was accordingly adjusted towards the payment due under the fresh return. Having done so, the W.T.O. added interest under Sec.17(B) at 24% p.a. for the period from 1.7.89 to 27.6.90 amounting to Rs.5,490/- and raised a demand for the said additional payment. Aggrieved, the petitioner has filed the present writ petition, primarily on the ground that the amount of tax due having been paid before 1.7.89, the WTO was not justified in levying interest on the said amount merely because the return earlier filed and accepted by the Department was in the petitioner's individual capacity. There is considerable merit in that contention. It is not disputed that the petitioner had deposited the amount of tax payable even before 1.7.89 and that the said amount had been eventually adjusted by the assessment authority towards the liability arising from his assessment in the status of HUF. There was therefore no retention of the money payable by the petitioner so as to justify a levy

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by way of interest. Just because the return filed by the petitioner was not in the capacity of HUF could not have in my opinion made any material difference, so long as the amount of tax payable had already been deposited by the petitioner within the time prescribed for the same.

2. In the circumstances, the order made by the WTO to the extent the same levies interest for the period mentioned therein cannot be sustained. This petition accordingly succeeds and is hereby allowed. The levy of interest at 24% p.a. for the period from 1.7.89 to 27.6.90 shall stand deleted from the impugned order. No costs.



Sd/-
JUDGE

sa c/hba/-